Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.		Applicant(s)	
Office Action Summary	10/004,346		COSSINS ET AL.	
	Examiner		Art Unit	
	Eliseo Ramos-Feliciano		2681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>*30 June 2004 and 03 May 2004*</u>.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-49* is/are pending in the application.

    4a) Of the above claim(s) *33-48* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-32 and 49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 November 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
      application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date <u>9</u>.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after revival of abandoned application under 37

CFR 1.137(b). (See Paper No. 8, mailed April 7, 2004). Since this application is eligible for

continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been

timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. See 37

CFR 1.137 (c). Applicant's submission filed on June 30, 2004 and May 3, 2004 has been

entered.

Election/Restrictions

2.   Newly submitted **claims 33-48** are directed to an invention that is independent or distinct

from the invention originally claimed for the following reasons: These inventions are distinct

and have acquired a separate status in the art. The inventions are distinct, each from the other

because the invention originally claimed and the invention of *claims 33-48* are related as

subcombinations disclosed as usable together in a single combination. The subcombinations are

distinct from each other if they are shown to be separately usable. In the instant case, the

invention of *claims 33-48* has separate utility as subject matter directed to management of

distributed database data and file access and retrieval, and retrieval of database data and files

from a centralized or remote site. See MPEP § 806.05(d).

Since applicant has received an action on the merits for the originally presented

invention, this invention has been constructively elected by original presentation for prosecution

on the merits. Accordingly, *claims 33-48* are <u>withdrawn</u> from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Information Disclosure Statement

3.   The references listed in the Information Disclosure Statement filed on May 3, 2004 have been considered by the examiner (see attached PTO-1449 form).

Double Patenting

4.   The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5.   **Claim 1** is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over *claim 11 of U.S. Patent No. 6,343,290*. Although the

conflicting claims are not identical, they are not patentably distinct from each other because of

the following reasons.

Regarding claim 1 of the instant application, claim 11 of U.S. Patent No. 6,343,290 reads

as follows:

"11. A system for managing a network using a processor, the system configured to generate display elements

comprising:

geographic elements having geographic characteristics;

network elements having network characteristics and generated for display in relation to the geographic elements;

and

performance elements having performance characteristics and each generated for display proximal to a

corresponding network element."

It is evident that the claims are essentially the same. The only difference is that the

subject claim of the present application reads "sectored performance elements having sectored

performance characteristics" in contrast to the claim cited above which does not include the

underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at

the time the invention was made because a "sectored performance element" is considered to be a

subset of the inclusive set represented by "performance element". In the same way that different

performance elements can be generated for display, subsets, sections or sectors of those

performance elements can also be generated for display. Additionally, in the same way that

particular "performance characteristics" correspond to "performance elements", "sectored

performance characteristics" also correspond to "sectored performance elements".

6.   **Claim 49** is rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over *claim 99 of U.S. Patent No. 6,343,290*. Although the

conflicting claims are not identical, they are not patentably distinct from each other because of

the following reasons.

Regarding claim 49 of the instant application, claim 99 of U.S. Patent No. 6,343,290

reads as follows:

"99. A method for managing a network using a processor comprising:

materializing a graphical interface;

generating for display for the graphical interface a network element; and

generating for display for the graphical interface a performance element having a performance characteristic;

wherein the performance element corresponds to the network element."

It is evident that the claims are essentially the same. The only difference is that the

subject claim of the present application reads "<u>sectored</u> performance element having a <u>sectored</u>

performance characteristic" in contrast to the claim cited above which does not include the

underlined limitation: "sectored".

However, this difference is deemed to be obvious to a person of ordinary skill in the art at

the time the invention was made because a "sectored performance element" is considered to be a

subset of the inclusive set represented by "performance element". In the same way that different

performance elements can be generated for display, subsets, sections or sectors of those

performance elements can also be generated for display. Additionally, in the same way that

particular "performance characteristics" correspond to "performance elements", "sectored

performance characteristics" also correspond to "sectored performance elements".

7.   NOTE: The present specification states that "a sector may include a section or any

portion" – page 39, line 12; and that "the performance element may be a sectored performance

element" – page 39, lines 19-20. Therefore, according the present specification it is understood

that a sectored performance element is a subset of the inclusive set represented by performance

element, and may include the set represented by performance element.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9.   **Claims 1-32 and 49** are rejected under 35 U.S.C. 102(b) as being anticipated by Sprecher

et al. (US Patent Number 5,285,494).

Regarding **claim 1**, Sprecher et al. discloses a system for managing a network; see the

title. The system utilizes a processor (inherent) and is configured to generate display elements;

see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the

display elements include:

geographic elements (e.g. West L.A.) having geographic characteristics (e.g. located to

the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) having network characteristics (e.g.

cell site outages and traffic patterns) and generated for display in relation to the geographic

elements (column 3, lines 50-56; column 14, lines 25-28 & 32-35); and

sectored performance elements (see the color codes at legend in Figure 4B – column 4,

lines 19-22) having sectored performance characteristics (e.g. critical, major, minor, ..., normal,

etc.), each generated for display proximal to a corresponding network element (see "LEGEND"

in Figure 4B, and column 4, lines 13-24). According to the LEGEND Figure 4B exhibits a

"NORMAL" condition view. Figure 4C, exhibits a sector view of that in Figure 4B. See also

column 5, lines 54-68, column 6, lines 1-5 & 66-68, column 7, lines 60-66.

Regarding **claim 2**, Sprecher et al. discloses everything claimed as applied above (see

claim 1). In addition, Sprecher et al. discloses a plurality of sectored performance elements (e.g.

cell site status, such as outages, and traffic patterns) for each network element (e.g. cell sites).

Each sectored performance element have a corresponding performance characteristic (e.g.

critical, major, minor, ..., normal, etc.); see column 3, lines 50-56, column 4, lines 13-24 and

Figure 4B, *inter alia*.

Regarding **claim 3**, Sprecher et al. discloses everything claimed as applied above (see

claim 1). In addition, Sprecher et al. discloses that the network includes at least one member of a

group consisting of a first area for which first data may be depicted geographically and a second

area for which second data may be depicted with respect to performance attributes for the

sectored performance elements. Sprecher et al. at least discloses a first area (LA R.O.C.C. –

Figure 4B; or WEST LOS ANGELES – Figure 4C) for which first data (LEGEND: critical,

major, minor, ..., normal, etc.) may be depicted geographically, see Figures 4B and 4C.

Regarding **claim 4**, Sprecher et al. discloses everything claimed as applied above (see

claim 1). In addition, Sprecher et al. discloses that the network includes at least one member of a

group consisting of a communication network, an oil network, a gas network, a store network, a

packaging network, and another business network. For example, Sprecher et al. at least discloses

a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5,

line 60, and column 14, lines 25-28 & 32-35, *inter alia.*

Regarding **claim 5**, Sprecher et al. discloses a system for managing a network; see the

title. The system utilizes a processor (inherent) and is configured to generate display elements;

see Figures 4-4C and column 3, line 50 to column 4, line 32. As depicted in Figures 4B-4C, the

display elements include:

geographic elements (e.g. West LA) having at least one geographic characteristic (e.g.

located to the west of Los Angeles);

network elements (cell sites/sectors – col. 5, line 59) each having at least one network

characteristic (e.g. cell site outages and traffic patterns) (column 7, lines 14-19, column 14, lines

25-28 & 32-35); and

sectored performance elements (see the color codes at legend 157 in Figure 4B – column

4, lines 19-22) having at least one sectored performance characteristic (e.g. critical, major,

minor, ..., normal, etc.), each sectored performance characteristic corresponding to a sectored

performance attribute (network usage: traffic; network condition: outages – column 3, lines 50-

56; column 7, lines 13-19) and each sectored performance element generated for display for at

least one network element (Figure 4B-C).

Regarding **claim 6**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that a plurality of sectored performance elements

(color codes at legend in Figure 4B) are generated for display for each network element. See

column 4, lines 19-22. For example, any of the color codes (sectored performance elements) can

be applied to a particular network element. In exemplary Figure 4B, WEST LA depicts a normal

condition represented as a white or blank circle.

Regarding **claim 7**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that the network includes at least one member of a

group consisting of a communication network, an oil network, a gas network, a store network, a

packaging network, and another business network. For example, Sprecher et al. at least discloses

a cellular phone network (communication network); see column 1, lines 6-11 & 29-30, column 5,

line 60, and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 8**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one network element is representative

of at least one member of a group consisting of a communication network element, an oil

network element, a gas network element, a store network element, a packaging network element,

and another business network element. For example, Sprecher et al. at least discloses a cellular

phone network element (communication network element) such as "telephone switches, cellular

phone sites and other related elements"; see column 1, lines 6-11 & 29-30, column 5, line 60,

and column 14, lines 25-28 & 32-35, *inter alia*.

Regarding **claim 9**, Sprecher et al. discloses everything claimed as applied above (see

claim 5). In addition, Sprecher et al. discloses that at least one sectored performance

characteristic (see LEGEND explained above; e.g. NORMAL) for at least one sectored

performance element (see color codes explained above) comprises at least one member of a

group consisting of a color, a shade, a cross-hatch, a fill, and a shape. See Figures 4B-4C,

column 4, lines 19-22.

Regarding **claim 10**, Sprecher et al. discloses everything claimed as applied above (see *claim 9*). In addition, Sprecher et al. discloses that at least one other sectored performance characteristic (e.g. MAJOR) for the at least one sectored performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example, compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 11**, Sprecher et al. discloses everything claimed as applied above (see *claim 9*). In addition, Sprecher et al. discloses that at least one other sectored performance characteristic (e.g. MAJOR) for at least one other sectored performance element comprises at least one member of a group consisting of a second color, a second shade, a second cross-hatch, a second fill, and a second shape. See Figures 4B-4C, column 4, lines 19-22. For example, compare slash lines (second color, shade, cross-hatch or fill) for MAJOR with back-slash lines for MINOR or dots for CRITICAL, *inter alia*, in Figure 4B.

Regarding **claim 12**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sectored performance element comprises at least a portion of at least one member of a group consisting of a concentric ring, a pie-shape, a circle, and a polygon. See Figures 10 & 13, column 7, lines 40-42, and column 9, lines 51-57.

Regarding **claim 13**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that a plurality of the sectored performance elements comprise at least a portion of at least one member of a group consisting of a plurality of

stacked polygons and a plurality of concentric rings. See Figures 10 & 13, column 7, lines 40-42, and column 9, lines 51-57.

Regarding **claim 14**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sectored performance element comprises a shape, wherein the shape is configured to vary (e.g. circle or diamond – Figure 4C) depending on a value of a corresponding sectored performance attribute. (Column 4, lines 13-32 and Figure 10).

Regarding **claim 15**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sectored performance element has a position (location in map, graph or figure), and the position is configured to vary depending on a value of a corresponding sectored performance attribute. (Column 4, lines 13-32).

Regarding **claim 16**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that at least one sectored performance characteristic of at least one sectored performance element is configured to vary (ranging from a normal condition to a critical condition) depending on a value of a corresponding sectored performance attribute (e.g. critical condition). (Column 4, lines 13-32).

Regarding **claim 17**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses a setting selector (system configuration module 139) configured to enable configuration of at least one performance level for each sectored performance attribute (e.g. network usage as explained above) and to associate a specific sectored performance characteristic (e.g. critical) to a specific performance level (particular color

code). See column 5, lines 6-7, column 7, lines 40-42, column 8, lines 50-61 and column 4, lines 13-32.

Regarding **claim 18**, Sprecher et al. discloses everything claimed as applied above (see *claim 5*). In addition, Sprecher et al. discloses that the specific sectored performance characteristic is generated based on a data attribute (ranging from a normal condition to a critical condition) for the specific performance level. (Column 4, lines 13-32).

As to **claims 19-32**, they are exact corresponding method claims of system *claims 5-18*, respectively. Therefore, they are rejected for the same reasons explained above.

Regarding **claim 49**, Sprecher et al. discloses a method for managing a network (see the title) using a processor (inherent) including:

materializing a graphical interface (156) (see Figure 4B; column 14, line 23, column 15, line 34, column 16, line 41);

generating for display for the graphical interface (156) at least one network element (cell sites/sectors – col. 5, line 59); and

generating for display for the graphical interface (156) at least one sectored performance element (see the color codes at legend 157 in Figure 4B – column 4, lines 19-22) having a sectored performance characteristic (e.g. critical, major, minor, ..., normal, etc.);

wherein the at least one sectored performance element (e.g. color code NORMAL) corresponds to the at least one network element (e.g. cell site WEST LA). (See Figure 4B, column 4, lines 19-22).

Response to Arguments

10.   Applicant's arguments filed June 30, 2004 and May 3, 2004 have been fully considered

but they are not persuasive.

11.   Applicant argues, with respect to the obviousness-type double patenting rejection, that

the differences between claim 1 of the instant application and claim 11 of USPN 6,343,290 are

not obvious and requests evidence. In addition, applicant argues individual sectors in a cell site.

(See page 10, third paragraph to page 11, first paragraph of arguments filed June 30, 2004).

In response, attention is directed to the present specification that defines sector as

follows: "a sector may include a section or any portion" – page 39, line 12. The present

specification further defines that "the performance element may be a sectored performance

element" – page 39, lines 19-20. Therefore, according the present specification it is understood

that a sectored performance element is a subset of the inclusive set represented by performance

element, and may include the set represented by performance element. In addition, the claims of

the instant application do not link cell sectors with sectored performance elements as argued.

In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., individual

sectors in a cell site) are not recited in the rejected claim(s). Although the claims are interpreted

in light of the specification, limitations from the specification are not read into the claims. See *In

re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

12.   Applicant argues, with respect to the rejection under 35 USC 102 to claims 1-2, that

Sprencher et al. cannot teach network elements having network characteristics and generated for

display in relation to the geographic elements, and sectored performance elements having

sectored performance characteristics, each generated for display proximal to a corresponding

network element. Applicant adds that Sprencher does not disclose or teach sectored performance

elements in addition to the network elements. (See page 11, second paragraph to page 14, last

paragraph, especially page 12 first three full paragraphs, of arguments filed June 30, 2004).

In response, attention is directed to Figure 4B, as explained in the rejection above. The

network elements can be, for example, cell sites/sectors (see col. 5, line 59) (see also column 14,

lines 25-28 & 32-35). The sectored performance elements can be, for example the color codes at

LEGEND in Figure 4B (see column 4, lines 19-22). The sectored performance elements have

sectored performance characteristics which can be, for example, CRITICAL, MAJOR, MINOR,

..., NORMAL, *inter alia* (see LEGEND in Figure 4B); each generated for display proximal to a

corresponding network element (column 4, lines 13-32).

Conclusion

13.   Any inquiry concerning this communication from the examiner should be directed to
Eliseo Ramos-Feliciano whose telephone number is 703-305-0078. The examiner can normally
be reached from 8:00 a.m. to 5:30 p.m. on 5-4/9 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, David Hudspeth, can be reached on (703) 308-4825. The fax phone number for the
organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent
Application Information Retrieval (PAIR) system. Status information for published applications
may be obtained from either Private PAIR or Public PAIR. Status information for unpublished
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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

9-30-04

ELISEO RAMOS-FELICIANO
ERF/erf   **PATENT EXAMINER**
September 30, 2004.